IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

OP.No. 14689 of 1998(W)

PETITIONER:

P.R. MOHAN KUMAR, ISWARYA, MANAKKARA,
SASTHAMKOTTA, KOLLAM.

BY ADV. SRI.V.BHASKARAN PILLAI

RESPONDENTS:

---

1. STATE OF KERALA, REP. BY SPECIAL SECRETARY TO CO-OPERATION, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, KOLLAM.

3. ASST. REGISTRAR (GENERAL), OFFICE OF ASST. REGISTRAR OF CO-OPERATIVE SOCIETIES, KARUONAGAPPALLY.

4. ASST. REGISTRAR (GENERAL), OFFICE OF ASST. REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), SASTHAMCOTTA.

5. SASTHAMCOTTA PRIMARY LAND MORTGAGE BANK NO.Q-373, REP. BY ITS PRESIDENT, SASTHAMCOTTA LAND MORTGAGE BANK LTD., NO. Q-373, SASTHAMCOTTA.

BY ADV. SRI.P.SANTHALINGAM
SRI.S.SHARAN
GOVERNMENT PLEADER SRI.NOBLE MATHEW.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF ENQUIRY REPORT DT. 13-6-1986.

EXT.P2 REPORT DT. 31-12-1987.

EXT.P3 SHOW CAUSE NOTICE DT. 10-3-1988.

EXT.P4 REPLY DT. 15-4-1988.

EXT.P5 ORDER DT. 19-7-1988.

EXT.P6 DEPOSITION DT. 5-12-1992.

EXT.P7 AFFIDAVIT DT. 23-3-1988.

EXT.P8 ORDER DT. 6-4-1998.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=

O.P. No. 14689 of 1998

=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=

Dated this, the 10th January, 2007.

J U D G M E N T

Petitioner is an erstwhile Typist of the 5th respondent-Bank. On receiving information regarding serious financial irregularities in the Bank, an enquiry was ordered under Section 65 of the Kerala Co-operative Societies Act (for short 'the Act'). That enquiry was conducted by the Joint registrar of the Co-operative Societies, Kollam. In that enquiry, the Joint Registrar came to the conclusion that the petitioner was responsible for misappropriation of money from the Bank. Ext. P1 is the report filed by the 2nd respondent under Section 65 of the Act. Based on the same, the 3rd respondent conducted an enquiry under Section 68(1) of the Act. When this enquiry was under progress, the petitioner approached this Court by filing O.P.No. 8068/1986 in which this Court directed the enquiry officer to permit the petitioner to avail the services of a helper in the enquiry. Accordingly, the enquiry under Section 68(1) was continued after giving the petitioner an opportunity to participate in the enquiry with the assistance of a helper. After the enquiry, Ext.P2 report was filed by the 3rd respondent in which he found that the petitioner and two others namely, M/s. V. John Panicker, Secretary of the Bank, and V. Sanathanan Pillai, Senior Supervisor were jointly and severally liable to make good the amounts misappropriated from the Bank. On the basis of Ext. P2 report, Ext. P3 show cause notice was issued to the petitioner under sub-section (2) of Section 68 of the Act for imposition of surcharge on the petitioner. The petitioner filed Ext.P4 explanation to the said show cause notice, which did not find favour with the 2nd respondent who, by Ext. P5 order, held that going by the evidence available, the petitioner alone received the money misappropriated and as far as the others are concerned, they could only be accused of dereliction of duty. On that finding, the petitioner was directed to pay

a total amount of Rs. 2,02,451.90 being the amount misappropriated and interest in respect of the amounts misappropriated by the petitioner. The petitioner filed an appeal before the 1st respondent-Government which was also rejected by Ext. P8 order. The petitioner is challenging Exts. P2 and P8 orders in this original petition.

2. The petitioner raises several contentions. The first is that under Section 65 of the Act, the Joint Registrar had no power to find that any particular person has misappropriated any money or that that particular person is liable for any money misappropriated by him, but he can only conduct an enquiry into the constitution, working and financial condition of the Bank. He therefore submits that Ext. P1 enquiry report, which is the basis of Exts. P2 and P9 is totally unsustainable and consequently, Exts. P2 and P9 also.

3. The relevant provision is Section 65. Section 65(1) reads as under:

> **"65. Inquiry by Registrar**:- (1) The Registrar may,-
>
> (a) on his own motion; or
>
> (b) on an inquiry report of the Vigilance Officer appointed under Section 68A; or
>
> (c) on a report of the Director of Co-operative Audit appointed under Section 63; or
>
> (d) on an application by the majority of the members of the committee of the society, or by not less than one third of the quorum for the general body meeting, whichever is less; or
>
> (e) on an application by the apex society or financing bank of which such society is a member; or
>
> (f) on an application of a society to which the society concerned is affiliated,-
> hold an enquiry by himself or by a person authorised by order in writing, <u>into the Constitution, working and financial condition of the society</u>, if he is satisfied that it is necessary so to do."
>
> xx xx xx
>
> (Emphasis supplied)

Going by the same, I find that the Section is couched in very wide terms and the person enquiring can hold an enquiry into the constitution, working and financial condition of the Society which would naturally include the question of misappropriation of money from the Society by an employee of the Bank and therefore I do not find any merit whatsoever in the contention of the petitioner that Ext. P1 report is in any way vitiated for being violative of Section 65 of the Act.

4. The second contention is that while conducting enquiry under Section 65 and filing Ext. P1 report, the petitioner was not given an opportunity of being heard and since the report specifically mentions the petitioner as one of the persons responsible for the misappropriation, that finding could have been entered into only after giving the petitioner an opportunity of being heard. I do not think that any such opportunity can be read into Section 65. Section 65 is intended for an enquiry into the constitution, working and financial condition of the Society and to file a report regarding the same based on which appropriate proceedings have to be taken under the provisions of the Act including proceedings under Section 68 of the Act. The enquiry under Section 65 is only a fact fonding enquiry to enable the authorities under the Act to take appropriate proceedings based on that. The question of giving the petitioner an opportunity of being heard arises only in such proceedings pursuant to the report under Section 65. In fact, in this case, I find that in the enquiry under Section 68(1), the petitioner has been given all possible opportunities to defend himself against the action to be take against him under Section 68. I find that in proceedings under Section 68(1) pursuant to orders of this Court, the petitioner was given the assistance of a helper of his choice. All the witnesses who gave statements before the enquiring authority under Section 65 were summoned to give evidence in the proceedings under Section 68(1) and the petitioner

had elaborately cross examined them. As such, the petitioner cannot now state that he was not given opportunity to defend himself in the proceedings . Therefore, I do not find any merit in the contention of violation of principles of natural justice also.

5. The next contention raised by the petitioner is that there is no sufficient evidence either before the enquiry officer under Section 65 or under Section 68(1) to find that the petitioner was responsible for any misappropriation of money. I have gone through both Exts. P1 and P2. A reading of the same would leave no room for doubt whatsoever that the petitioner was in fact responsible for misappropriation of money. In both Exts. P1 and P2, both the officers concerned have taken elaborate pains to deal with the evidence before them to graphically describe the modus operandi by which the petitioner misappropriated the money belonging to the Bank in very ingenious ways. Although the petitioner would contend that the petitioner has been found guilty solely on the basis of the evidence given by the others who were also found responsible, I do not find that that contention has any legs to stand. I find that even third party customers of the Bank had also given evidence, which would go to prove the misconduct of the petitioner. Further, the finding is that the actual misappropriation was done by the petitioner himself and the others were only guilty of dereliction of duty, which helped the petitioner in his illegal designs. In the above circumstances, I am more than satisfied that there was sufficient evidence both in the enquiry under Section 65 and under Section 68(1) to hold that the petitioner was responsible for the misappropriation and that he pocketed the money so misappropriated. That being so, the petitioner cannot challenge either Ext. P1 or P2 on the ground of want of evidence. In any event, in proceedings under article 226 of the Constitution, I cannot sit in appeal over the decisions of the statutory authorities, except to find out whether there is any perversity in the

findings thereof. On a perusal of Exts. P1 and P2, I do not find any perversity whatsoever in the same. On the other hand, I find that the findings entered therein are based on cogent evidence, which would certainly lead to the conclusion of guilt of the petitioner with sufficient certainty required for such proceedings.

6. The petitioner would further contend that the petitioner has not been given show cause notice under Section 68(1) but only under Section 68(2). Section 68 reads as under:

> "**68. Surcharge**:- (1) If in the course of an audit, inquiry, inspection or the winding up of a society, it is found that any person, who is or was entrusted with the organisation or management of such society or who is or has at any time been an officer or an employee of the society, has made any payment contrary to the Act and the rules or the bye-laws, or has caused any loss or damage in the assets of the society by breach of trust or wilful negligence or mismanagement or has misappropriated or fraudulently retained any money or other property belonging to such society or has destroyed or caused the destruction of the records, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorised by him by an order in writing in his behalf, to inquire into the conduct of such person.
>
> (2) Where an inquiry is made under sub-section (1), the Registrar may, after giving the person concerned an opportunity of being heard, by order in writing, require him to repay or restore the money or other property or any part thereof, with interest at such rate, or to pay contribution and costs or compensation to such extent, as the Registrar may consider just and equitable."

The above Section makes it abundantly clear that what is contemplated under the Section is only an opportunity of being heard under Section 68(2). In any event, the petitioner was also given sufficient opportunity to present his case in the enquiry under Section 68(1). As such, the petitioner was not able to satisfy me that any prejudice whatsoever has been caused to the petitioner on account of the procedure adopted by the respondents in the matter.

7. There is a further contention by the petitioner that although in Ext. P2, apart from the petitioner, others were also found responsible, he alone was singled out for imposition of surcharge

under Section 68(2), which is discriminatory and unsustainable. Of course, in Ext. P2, the 3rd respondent had in fact found that some other employees of the Bank were also guilty of dereliction of duty and therefore they are also jointly and severally liable for the amount. But, there is no finding that they had any hand in the actual misappropriation itself and the entire finding centers round the petitioner in respect of the actual misappropriation of the amounts. As such, it is clear that even in Ext. P2, the specific finding is that misappropriated money was taken by the petitioner alone. Therefore, I do not find any merit in the contention that the 2nd respondent ought to have imposed surcharge on the other persons found responsible for dereliction of duty which paved the way for the petitioner to commit the misappropriation. As such, the 2nd respondent cannot be found fault with for imposing surcharge on the petitioner alone since the specific finding is that the petitioner was the real person who had the benefit of the money he misappropriated and the others were only guilty of dereliction of duty and there is not even a finding of collusion or connivance in the matter. Since I have held that Exts. P1,P2 and P5 are sustainable in law, Ext. P8 also cannot be found fault with because the same only confirms the other orders in appeal.

8. I do not find any merit in any of the contentions of the petitioner. Accordingly, the original petition is dismissed.

However, if the petitioner is able to prove in appropriate proceedings that the other employees also got part of the money he misappropriated, it would be open to the petitioner to prove the same in appropriate proceedings and take proceedings to recover the same from them.

Sd/- S. Siri Jagan, Judge.

Tds/